

## REMARKS

In the Office Action, claims 30-33, 36-39, 42-44 and 46-54 are rejected under 35 U.S.C. § 103; and claims 34 and 40 have been objected. Claims 55 and 56 have been newly added. Applicants believe that the rejections have been overcome based on at least the reasons set forth below.

At the outset, claims 34 and 40 have been objected but would be allowable if rewritten in independent form. See, Office Action, page 2. In response, Applicants have added claims 55 and 56 that essentially represent claims 34 and 40, respectively, in independent form. Claims 34 and 40 have been canceled without prejudice or disclaimer. Therefore, Applicants respectfully submit that claims 55 and 56 should be rendered allowable.

With respect to the claims 30-33, 36-39, 42-44 and 46-54, these claims are rejected under 35 U.S.C. § 103 as allegedly unpatentable over U.S. Patent No. 4,720,390 ("Bachler") in view of U.S. Patent No. 4,919,958 ("Kadan"), U.S. Patent No. 2,487,600 ("Schneiderwirth") and Bowes and Church's Food Values page 58 ("Food Values"). The Patent Office primarily relies on Bachler and thus relies on the remaining cited art to remedy allegedly the deficiencies of same. Applicants believe that the obviousness rejection is improper.

Of the pending claims at issue, claims 30, 47 and 54 are the sole independent claims. Claim 30 recites a gelled nutritional composition. The composition includes a protein source with a gelled whey protein, a carbohydrate source, minerals, and vitamins wherein the protein source provides 10% to 25% of the energy of the composition and wherein the carbohydrate source provides 75% to 90% of the energy of the composition.

Claim 47 recites a method of providing nutrition to a patient suffering from dysphagia. The method includes administering to the patient a gelled nutritional composition that contains a protein source with gelled whey protein, a carbohydrate source, minerals and vitamins.

Claim 54 recites a method for providing supplemental nutrition to a child. The method includes administering to the child a gelled nutritional composition that contains a protein source with gelled whey protein, a carbohydrate source, minerals and vitamins.

The gelled nutritional compositions of the present invention include four major components, namely, proteins including gelled whey protein, carbohydrates, minerals and vitamins. The nutritional product as claimed is further defined by the protein and carbohydrate

content expressed as an energy content. Applicants have discovered that the gelled nutritional composition as claimed can be particularly useful as nutrition for persons suffering from dysphagia which often occurs after medical or dental surgery, children and the like. In this regard, the claimed gelled nutritional compositions can be readily swallowed and, in addition, provide a desirable energy balance. See, Specification, p. 3, lines 11-17.

In contrast, the cited references, even if combinable, fail to disclose or suggest the claimed invention. At the outset, the primary Bachler reference is deficient with respect to the claimed invention for at least a number of reasons. For example, the Bachler reference is deficient with respect to the energy content associated with the carbohydrate as even admitted by the Patent Office. See, Office Action, page 2.

Further, the primary focus of Bachler relates to an oil-in-water emulsion. This enables liquid oils, for example, oils rich in unsaturated fatty acids, to be incorporated in products of solid texture. See, Bachler, column 5, lines 16-18. Clearly, this is different from the claimed nutritional gelled compositions that include four major components, namely, proteins including gelled whey protein, carbohydrates, minerals and vitamins as previously discussed. As disclosed in the specification, for example, on page 6, lines 17-22, the nutritional compositions can be produced by suspending the protein source in water under stirring. The carbohydrate source, the lipid source if used, the vitamins and minerals, solidified agents, flavors and colors can then be added to provide a liquid mixture.

Indeed, the oil-in-water emulsion of Bachler is utilized as a replacement of eggs, thickeners or gelling agents. See, Bachler, column 5, lines 3-5. Moreover, Bachler provides compositions that have a high fat content with a very low carbohydrate content, such as the desserts or jellies as disclosed in example 9 of Bachler in columns 11 and 12. For at least these reasons, Bachler on its own is clearly distinguishable from the claimed invention to the extent that it effectively teaches away from gelled nutritional compositions that provide a well-balanced nutrition for persons recovering from surgery and suffering from dysphasia and the like as claimed and previously discussed.

Further, Applicants do not believe that the remaining cited art can be relied on solely even if combinable to remedy the deficiencies of Bachler. Nowhere does the remaining cited art disclose or suggest the gelled nutritional compositions as claimed, let alone methods of providing

nutrition to a patient suffering from dysphagia or methods for providing supplemental nutrition to a child that utilize the gelled nutritional compositions as further defined in claims 47 and 54. Indeed, the primary emphasis of Kadan relates to the exclusion of eggs from nutritional compositions, such as flan-type puddings. See, Kadan, Abstract. Moreover, Kadan provides that the resulting flans are complex multi-component products that exhibit an unpredictable texture (see, Kadan, col. 2, lines 30-40) in contrast to the gelled nutritional compositions, let alone in clear gel form as further defined in claim 37.

With respect to the Schneiderwirth reference, the primary emphasis relates to providing gels of water insoluble salts associated with alkaline earth metals that are colloidally dispersed in an aqueous medium and which allegedly may be useful in supplying minerals and vitamins. See, Schneiderwirth, col. 1, lines 1-30. However, such a composition cannot be used as a complete and well-balanced nourishment for persons in need of same. In contrast, the gelled nutritional compositions as claimed are particularly beneficial for dysphagia patients, children and the like and thus can be readily swallowed in addition to providing a well-balanced nutrition as previously discussed.

With respect to the Food Value reference, this reference merely provides a list of food constituents and their total energy content. At most, the gelatin deserts listed therein provide a relatively high carbohydrate content. However, this provides little if any additional support to Bachler as it merely illustrates what is generally known in the art that sweets have a high carbohydrate content.

Indeed, the Patent Office has relied upon alleged teaching from four different references. Clearly, this suggest an improper use of hindsight analysis in support of the obviousness rejection. Further, the primary Bachler reference effectively teaches away from the claimed invention. As previously discussed, the oil-in-emulsions act as a substitute for gelling agents. Why then would one skilled in the art be motivated to modify Bachler to provide a gelled nutritional composition as claimed. Moreover, the remaining references are also deficient with respect to gelled nutritional compositions as claimed and advantages thereof with respect to nutrition, such as for providing supplemental nutrition to a child (claim 54) and for providing nutrition to a patient suffering from dysphasia (claim 47).

Applicants have surprisingly discovered a nutritional product with a gel consistency that is suitably adapted for administration to dysphagia patients and the like and that have a high nutritional value such that the product is composed of high amounts of carbohydrates, low amounts of fat, and moderate amounts of proteins, vitamins and minerals. Again, nowhere does the cited art recognize the advantages of gelled nutritional compositions that can provide well-balanced nutrition as well as promote ready use of same, particularly with respect to the administration thereof to persons suffering from dysphagia, to children and the like as claimed. Therefore, Applicants do not believe that one skilled in the art would be inclined to modify and/or combine the cited art to arrive at the claimed invention.

Based on at least these reasons, Applicants believe that the cited art fails to disclose or suggest the claimed invention. Therefore, Applicants respectfully submit that the cited art, even if combinable, fails to render obvious the claimed invention.

For the foregoing reasons, Applicants respectfully submit that the present application is in condition for allowance and earnestly solicit reconsideration of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY 

Robert M. Barrett  
Reg. No. 30,142  
P.O. Box 1135  
Chicago, Illinois 60690-1135  
Phone: (312) 807-4204

Dated: August 26, 2004